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Attorneys for Plaintiff and
Cross-Defendant CHURCH OF SCIENTOLOGY
INTERNATIONAL

RECEIVED

FEB 16 1994

HUB LAW OFFICES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California not-
for-profit religious corporation;

Plaintiffs,

vs.

GERALD ARMSTRONG; MICHAEL WALTON;
et al.,

Defendants.

GERALD ARMSTRONG,
Cross-Complainant,

vs.

CHURCH OF SCIENTOLOGY
INTERNATIONAL, a California
Corporation; DAVID MISCAVIGE;
DOES 1 to 100;
Cross-Defendant.

) CASE NO. 157 680
)
) REPLY IN SUPPORT OF CHURCH
) OF SCIENTOLOGY
) INTERNATIONAL'S DEMURRER
) AND MOTION TO STRIKE GERALD
) ARMSTRONG'S CROSS-COMPLAINT

)
)
) DATE: February 18, 1994
) TIME: 9:00 a.m.
) DEPT: 1

) DISCOVERY CUT-OFF: None
) MOTION CUT-OFF: None
) TRIAL DATE: None

1 1994,¹ making Armstrong's oppositions due on February 10, 1994,
2 five court days before the hearing.

3 Armstrong filed and served nothing on February 10, 1994.
4 Instead, on February 14, 1994, he faxed to the Church's counsel a
5 document entitled "Notice of Intention to File First Amended Cross-
6 Complaint" [Ex. A]. As of this writing, no "First Amended Cross-
7 Complaint" has been received.

8 Armstrong has had 42 days in which to formulate an amended
9 cross-complaint. It is evident by his silence and delay that he
10 cannot cure the defects identified in the Church's demurrer.
11 Accordingly, the demurrer must be sustained without leave to amend.

12 II.

13 ARMSTRONG'S CROSS-COMPLAINT CANNOT BE AMENDED

14 TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

15 A demurrer should be sustained without leave to amend "if it
16 appears from the complaint that under applicable substantive law
17 there is no reasonable possibility that an amendment could cure the
18 complaint's defects." Heckendorn v. City of San Marino (1986) 42
19 Cal.3d 481, 486, 723 P.2d 64, 229 Cal.Rptr. 324, 327. It is
20 appropriate to sustain a demurrer without leave to amend if it is
21 apparent from the pleadings that the stated claims are barred by
22 the statute of limitations. CAMSI IV v. Hunter Technology Corp.
23 (1991) 230 Cal.App.3d 1525, 1529, 282 Cal.Rptr. 80, 82; DeRose v.
24 Carswell (1988) 196 Cal.App.3d 1011, 1030-1031, 241 Cal.Rptr. 368,
25 380. Indeed, the plaintiff (or cross-complainant) bears the burden
26

27 ¹ The hearing was originally set with the clerk for February 11,
28 1994, but was changed by the Court, because of the holiday, to
February 18, 1994.

1 of showing that there is a reasonable possibility that the defect
2 in a complaint (or cross-complaint) can be cured. Blank v. Kirwan
3 (1985) 39 Cal.3d 311, 318, 216 Cal.Rptr. 718, 721-22.

4 Here, the Church has conclusively demonstrated that (1) all of
5 the allegations contained in the cross-complaint, with the
6 exception of two paragraphs, specifically allege discrete events
7 which are claimed to have occurred beyond the applicable statute of
8 limitations,² and (2) the remaining paragraphs allege actions which
9 are absolutely privileged under California Civil Code Section 47,
10 and cannot represent any element of a claim for abuse of process.³
11 Further, the Church has shown, by records of which this Court can
12 take judicial notice, that the two actions alleged to have occurred
13 later than the statute amounted to the filing of complaints in two
14 actions which are still pending, one in Los Angeles County Superior
15 Court, and one in this Court. Armstrong is therefore unable, as a
16 matter of law, to convert his claim to an action for malicious
17 prosecution. Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss

18
19 ² The applicable statute of limitations is the one-year statute
20 of limitations pursuant to Code of Civil Procedure Section 340.
Thornton v. Rhoden (1966) 245 Cal.App.2d 80, 95, 53 Cal.Rptr. 706,
717.

21 ³ Indeed, in Oren Royal Oaks Venture v. Greenberg, Bernhard,
22 Weiss & Karma, Inc. (1986) 42 Cal.3d 1157, 1169, 232 Cal.Rptr. 567,
23 728 P.2d 1202, the California Supreme Court held that the precise
conduct alleged by Armstrong, filing or maintaining a lawsuit,
cannot support a claim for abuse of process, stating:

24 The relevant California authorities establish
25 ... that while a defendant's act of improperly
26 instituting or maintaining an action may, in an
27 appropriate case, give rise to a cause of action for
malicious prosecution, the mere filing or maintaining of
a lawsuit -- even for an improper purpose -- is not a
proper basis for an abuse of process action. The
overwhelming majority of out-of-state precedents have
reached the same conclusion.

28 42 Cal.3d at 1169 (citations omitted).

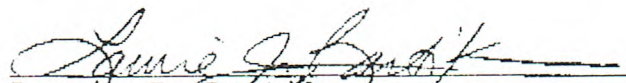
1 & Karma, Inc. (1986) 42 Cal.3d 1157, 1169, 232 Cal.Rptr. 567, 728
2 P.2d 1202.

3 Under these circumstances, there is no "reasonable
4 possibility" that Armstrong could amend his complaint to cure the
5 defects noted.⁴ The Church's demurrer should be sustained without
6 leave to amend.

7 CONCLUSION

8 Armstrong has not opposed the Church's demurrer to his cross-
9 complaint, nor has he opposed its motion to strike. Instead, he
10 has served a meaningless and untimely "notice of intention to
11 amend" the cross-complaint. On its face, the cross-complaint is
12 barred by the statute of limitations and Civil Code § 47, and no
13 amount of amendment by Armstrong can cure these defects.
14 Accordingly, the cross-defendant Church respectfully requests that
15 this Court sustain its demurrer without leave to amend.

16 Dated: February 16, 1994 Respectfully submitted,
17 BOWLES & MOXON

18
19 By: 
20 Laurie J. Bartilson

21 Andrew H. Wilson
22 WILSON, RYAN & CAMPILONGO

23 Attorneys for Plaintiff and Cross-
24 Defendant CHURCH OF SCIENTOLOGY
25 INTERNATIONAL

26 ARMFRAUD\REPLY.DEM

27 ⁴ Nor is there any perceivable reason to destroy the resources
28 of the Court while Armstrong attempts to do so. This Court can
take judicial notice that the cross-complaint herein is
substantially identical to the cross-complaint which Armstrong is
presently litigating in Los Angeles.

02-16-94 10:18AM

FROM BOWLES & MOXON

TO ANDREW WILSON

PG07/010

Exhibit A

1 Ford Greene
 California State Bar No. 107601
 2 HUB LAW OFFICES
 711 Sir Francis Drake Boulevard
 3 San Anselmo, California 94960-1949
 4 Attorney for Defendant
 GERALD ARMSTRONG
 5
 6
 7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 FOR THE COUNTY OF MARIN

10	CHURCH OF SCIENTOLOGY INTERNATIONAL,)	No. 157 686
11	a California not-for-profit)	
12	religious corporation,)	
	Plaintiff,)	
13	vs.)	NOTICE OF INTENTION TO
14		FILE FIRST AMENDED
		CROSS-COMPLAINT
15	GERALD ARMSTRONG; MICHAEL WALTON;)	
16	THE GERALD ARMSTRONG CORPORATION,)	
17	a California for-profit)	
18	corporation; DOES 1 through 100,)	
19	inclusive,)	
	Defendants.)	Date: February 18, 1994
		Time: 9:00 a.m.
		Dept: One
		Trial Date:

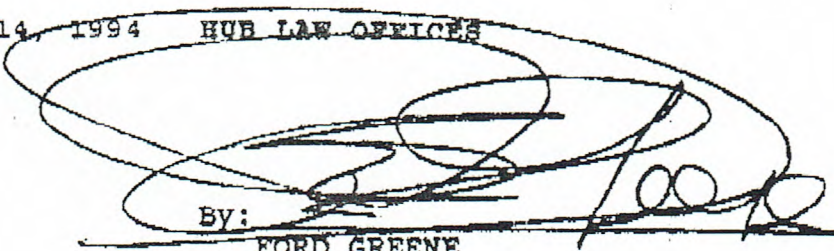
20 TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that it is the intention of defendant
 22 Gerald Armstrong to file a first amended cross-complaint pursuant
 23 to Code of Civil Procedure section 472 before the hearing on
 24 plaintiff's demurrer and motion to strike set for February 18,
 25 1994, in the above-entitled court.

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DATED: February 14, 1994 HUB LAW OFFICES



BY:

FORD GREENE
Attorney for Defendant
GERALD ARMSTRONG

PROOF OF SERVICE

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I am employed in the County of Marin, State of California. I am over the age of eighteen years and am not a party to the above entitled action. My business address is 711 Sir Francis Drake Boulevard, San Anselmo, California. I served the following documents: NOTICE OF INTENTION TO FILE FIRST AMENDED CROSS COMPLAINT

on the following person(s) on the date set forth below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California:

Andrew Wilson, Esquire
WILSON, RYAN & CAMPILONGO
235 Montgomery Street, Suite 450
San Francisco, California 94104

Laurie J. Bartilson, Esq.
BOWLES & MOXON
6255 Sunset Boulevard, Suite 2000
Los Angeles, California 90028

BY TELECOPIER

MICHAEL WALTON
707 Fawn Drive
San Anselmo, CA 94950

- (By Mail) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at San Anselmo, California.
- (Personal) I caused said papers to be personally service on the office of opposing counsel.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

DATED: February 14, 1994

